

State of Utah
Administrative Rule Analysis

NOTICE OF PROPOSED RULE

- * The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
- * Please address questions regarding information on this notice to the agency.
- * The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
- * The full text of all rule filings may also be inspected at the Division of Administrative Rules.

DAR file no:		Date filed:	
State Admin Rule Filing Id:		Time filed:	
	Agency No.	Rule No.	Section No.
Utah Admin. Code Ref (R no.):	R 156	-	64
Changed to Admin. Code Ref. (R no.):	R	-	

1.	Agency:	Commerce/Division of Occupational and Professional Licensing		
	Room no.:			
	Building:	Heber M. Wells Building		
	Street address 1:	160 East 300 South		
	Street address 2:			
	City, state, zip:	Salt Lake City UT 84111-2316		
	Mailing address 1:	PO Box 146741		
	Mailing address 2:			
	City, state, zip:	Salt Lake City UT 84114-6741		
	Contact person(s):			
	Name:	Phone:	Fax:	E-mail:
	Kristina Bean	801-530-6621	801-530-6511	kbean@utah.gov

(Interested persons may inspect this filing at the above address or at the Division of Administrative Rules during business hours)

2.	Title of rule or section (catchline):
	Deception Detection Examiners Licensing Act Rule
3.	Type of notice:
	New ____; Amendment XXXX; Repeal ____; Repeal and Reenact ____
4.	Purpose of the rule or reason for the change:
	The Division and the Deception Detection Examiners Board reviewed the rule and determined the following changes should be made. The purpose of this filing is to: (1) add to the existing definition of "deception detection case file" and "screening exam" and create a new definition for "directed lie screening"; (2) eliminate the education peer committee because there are not enough licensees to fill the committee; and (3) update the unprofessional conduct section to coincide with current standards of the profession.
5.	This change is a response to comments from the Administrative Rules Review Committee.
	No XXX; Yes ____
6.	Summary of the rule or change:

	<p>Section 102: Paragraph (5)(b) amends the definition of deception detection case file by requiring the name and license number of the examiner. Paragraph (6) is added to define a "directed lie screening exam". Paragraph (14) adds the clause "in the absence of any specific allegation" to the screening exam definition. Section 201: Deletes the section which creates the education peer committee. Section 502: Paragraph (4) makes it unprofessional conduct to base decisions concerning truthfulness upon data that fails to meet minimum requirements. Paragraph (20) - proposed amendment clarifies that using a relevant irrelevant scoring system instead of a numerical scoring system is not unprofessional conduct. Paragraph (22)(b)(iv) - proposed amendments require that all charts should include the license number of the examiner. Paragraph (22)(i) amends the requirement regarding a functionality check of an instrument from a quarterly basis to a semi-annual basis.</p>		
7.	Aggregate anticipated cost or savings to:		
	A) State budget:		
	Affected: No <input type="checkbox"/> ; Yes <input checked="" type="checkbox"/>		
	<p>The Division will incur minimal costs of approximately \$75.00 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.</p>		
	B) Local government:		
	Affected: No <input checked="" type="checkbox"/> ; Yes <input type="checkbox"/>		
	<p>The proposed amendments apply only to licensed deception detection examiners and applicants for licensure in that classification. As a result, the proposed amendments do not apply to local governments.</p>		
	C) Small businesses ("small business" means a business employing fewer than 50 persons):		
	Affected: No <input checked="" type="checkbox"/> ; Yes <input type="checkbox"/>		
	<p>The proposed amendments apply only to licensed deception detection examiners and applicants for licensure in that classification. Licensees and applicants for licensure may work in a small business; however, the proposed amendments will not directly affect the business.</p>		
	D) Persons other than small businesses, businesses, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):		
	Affected: No <input checked="" type="checkbox"/> ; Yes <input type="checkbox"/>		
	<p>The proposed amendments apply only to licensed deception detection examiners and applicants for licensure in that classification. The Division anticipates the proposed amendments will not result in additional encumbrances for any party beyond what is currently identified by statute or rule.</p>		
8.	Compliance costs for affected persons:		
	<p>The proposed amendments only apply to licensed deception detection examiners and applicants for licensure in that classification. The Division anticipates the proposed amendments will not result in any additional costs or savings to affected persons beyond those already established.</p>		
9.	A) Comments by the department head on the fiscal impact the rule may have on businesses:		
	<p>This rule filing clarifies standards regarding record keeping and data collection that licensed deception detection examiners must meet in their professional practice. It is anticipated that associated costs, if any, will affect individual licensees rather than businesses.</p>		
	B) Name and title of department head commenting on the fiscal impacts:		
	<p>Francine A. Giani, Executive Director</p>		
10.	This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.		
	State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) :		
	Section 58-64-101	Subsection 58-1-106(1)(a)	
	Subsection 58-1-202(1)(a)		
11.	This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Division of Administrative Rules; <i>if none, leave blank</i>):		
		First Incorporation	Second Incorporation
	Official Title of Materials Incorporated (from title page)		

	Publisher		
	Date Issued		
	Issue, or version		
	ISBN Number (optional)		
	ISSN Number (optional)		
	Cost of Incorporated Reference		
	Action: Adds, updates, or removes		
	(If this rule incorporates more than two items by reference, please attach additional pages)		
12.	The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)		
	A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy):	10/15/2014	
	B) A public hearing (optional) will be held:		
	On (mm/dd/yyyy):	At (hh:mm AM/PM):	At (place):
	09/17/2014	1:00 PM	160 East 300 South, Conference Room 475 (4th floor), Salt Lake City, Utah
13.	This rule change may become effective on (mm/dd/yyyy):		10/22/2014
	NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.		
14.	Indexing information -- keywords (maximum of four, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid"); may not include the name of the agency:		
	licensing	deception detection examiner	
	deception detection intern		
15.	Attach an RTF document containing the text of this rule change (filename):		R156-64.pro
To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> , and delaying the first possible effective date.			
AGENCY AUTHORIZATION			
Agency head or designee, and title:	Mark B. Steinagel, Director	Date (mm/dd/yyyy):	08/25/2014

R156. Commerce, Occupational and Professional Licensing.

R156-64. Deception Detection Examiners Licensing Act Rule.

R156-64-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 64, as used in Title 58, Chapters 1 and 64 or this rule:

(1) "Activity sensor" means a sensor attached to a deception detection instrument that is approved for use by the manufacturer of the instrument for placement under the buttocks of the examinee to detect movement and attempts at countermeasures by the examinee.

(2) "Clinical testing" means a deception detection examination which is not intended to supplement and assist in a criminal investigation.

(3) "Comparison question" means a nonrelevant test question used for comparison against a relevant test question in a deception detection examination.

(4) "Concealed information exam" means a recognition examination administered to determine whether the examinee recognizes elements of a crime not reported to the public that are known only to the individual who engaged in the behavior, an investigator or both.

(5) "Deception detection case file" means written records of a polygraph exam including:

(a) case information;

(b) ~~[examinee information]~~ the name and license number of the examiner;

(c) a list of all questions used during the examination;

(d) copies of all charts recorded during the examination;
and

(e) either the audio or video recording of the examination.

(6) "Directed lie screening exam" means a screening exam in which the examinee is instructed to lie to one or more questions.

(~~[6]~~7) "Experienced deception detection examiner" means a deception detection examiner who has completed over 250 deception detection examinations and has been licensed or certified by the United States Government for three years or more.

(~~[7]~~8) "Irrelevant and relevant testing" means a deception detection examination which consists of relevant questions, interspersed with irrelevant questions, and does not include any type of comparison questions.

(~~[8]~~9) "Irrelevant question" means a question of neutral impact, which does not relate to a matter under inquiry, in a deception detection examination.

(~~[9]~~10) "Post conviction sex offender testing" means testing of sex offenders and includes:

(a) sexual history testing to determine if the examinee is accurately reporting all sexual offenses prior to a conviction;

(b) maintenance testing to determine if the examinee is complying with the conditions of probation or parole; and

(c) specific issue examinations.

(~~[10]~~11) "Pre-employment exam" means a deception detection

screening examination administered as part of a pre-employment background investigation.

(~~[[11]~~12) "Qualified continuing professional education" means continuing education that meets the standards set forth in Section R156-64-304.

(~~[[12]~~13) "Relevant question" means a question which relates directly to a matter under inquiry in a deception detection examination.

(~~[[13]~~14) "Screening exam" means a multiple issue deception detection examination administered to determine the examinee's truthfulness concerning more than one narrowly defined issue in the absence of any specific allegation.

(~~[[14]~~15) "Specific issue/single issue examination" means a deception detection examination administered to determine the examinee's truthfulness concerning one narrowly defined issue.

(~~[[15]~~16) "Supervision" means general supervision as established in Subsection R156-1-102a(4)(c).

(~~[[16]~~17) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 64, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-64-502.

~~[R156-64-201. Education Peer Committee created - Membership - Duties.~~

~~—— (1) In accordance with Subsection 58-1-203(1)(f), there is created the Deception Detection Education Peer Committee.~~

~~—— (a) The duties and responsibilities of the Deception Detection Education Peer Committee are to conduct an oral interview on behalf of the Board to evaluate the deception detection intern's performance and make a recommendation to the Board to:~~

~~—— (i) approve the application; or~~

~~—— (ii) deny the application but extend the intern period.~~

~~—— (b) The composition of the Deception Detection Education Peer Committee shall be three deception detection examiners licensed in Utah who are not members of the Deception Detection Examiners Licensing Board.~~

~~]~~

R156-64-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) not immediately terminating the examination upon the request of the examinee;

(2) not conducting a pre-examination review with the examinee reviewing each question word for word prior to conducting the examination;

(3) attempting to determine truth or deception on matters or issues not discussed with the examinee during the pre-examination review;

(4) basing decisions concerning truthfulness or deception upon data that fails to meet the following minimum standards~~[less than]~~:

(a) two charts for a pre-employment exam;

(b) two charts for a screening exam that is to be followed by a specific issue exam; ~~[-or]~~

(c) three repetitions of each question on a directed lie screening exam; or

(d) three charts for all other exams;

(5) conducting an examination if the examinee is not physically present and aware that an examination is being conducted;

(6) using irrelevant and relevant testing techniques in other than pre-employment and periodic testing, without prior approval of the Division in collaboration with the Board;

(7) using a polygraph instrument that does not record as a minimum:

(a) respiration patterns recorded by two pneumograph components recording thoracic and abdominal patterns;

(b) electro dermal activity reflecting relative changes in the conductance or resistance of current by the epidermal tissue;

(c) relative changes in pulse rate, pulse amplitude and relative blood volume by use of a cardiograph;

(d) continuous physiological recording of sufficient amplitude to be easily readable by the examiner; and

(e) pneumograph and cardiograph tracings no less than one-half inch in amplitude when using an analog polygraph instrument;

(8) conducting in a 24-hour period more than:

(a) five specific issue examinations;

(b) five clinical examinations;

(c) five screening examinations;

(d) five pre-employment examinations; or

(e) 15 concealed information examinations;

(9) conducting an examination of less than the required duration as follows:

(a) 30 minutes for a concealed information exam;

(b) 60 minutes for a pre-employment exam; and

(c) 90 minutes for all other exams;

(10) failing, after January 1, 2011, to use an activity sensor in all testing unless the examinee suffers from a diagnosed medical condition that contraindicates its use;

(11) not audibly recording all criminal/specific examinations and informing the examinee of such recording prior to the examination;

(12) during a pre-employment pre-test interview or actual examination, asking any questions concerning the subject's sexual attitudes, political beliefs, union sympathies or religious beliefs unless there is demonstratable overriding reason;

(13) publishing, directly or indirectly, or circulating any fraudulent or false statements as to the skill or method of practice of any examiner;

(14) dividing fees or agreeing to split or divide the fees received for deception detection services with any person for referring a client;

(15) refusing to render deception detection services to or for any person on account of race, color, creed, national origin, sex or age of such person;

(16) conducting an examination:
(a) on a person who is under the influence of alcohol or drugs; or
(b) on a person who is under the age of 14 without written permission from the person's parent or guardian;
(17) not providing at least 20 seconds between the beginning of one question and the beginning of the next;
(18) failing during a pretest interview to specifically inquire whether the individual to be examined is currently receiving or has in the past received medical or psychiatric treatment or consultation;
(19) failing to obtain a release from the individual being examined or a physician's statement if there is any reasonable doubt concerning the individual's ability to safely undergo an examination;
(20) not using a numerical scoring system in all ~~[specific]~~ examinations except for relevant irrelevant;
(21) not creating and maintaining a record for every examination administered;
(22) creating records not containing at a minimum the following:
(a) all charts on each subject properly identified by name and date and if the exam was performed on an analog polygraph instrument, signed by the examinee;
(b) an index, either chronological or alphabetical, listing:
(i) the names of all persons examined;
(ii) the type of exam conducted;
(iii) the date of the exam;
(iv) the name and license number of the examiner;
(v) the file number in which the records are maintained;
(vi) the examiner's written opinion of the test results;
and
(vii) the time the examination began and ended;
(c) all written reports or memoranda of verbal reports;
(d) a list of all questions asked while the instrument was recording;
(e) background information elicited during the pre-test interviews;
(f) a form signed by the examinee agreeing to take the examination after being informed of his or her right to refuse;
(g) the following statement, dated and signed by the examinee: "If I have any reason to believe that the examination was not completely impartial, fair and conducted professionally, I am aware that I can report it to the Division of Occupational and Professional Licensing";
(h) any recordings made of the examination; and
(i) documentation of an instrument functionality check on a ~~[quarterly]~~ semi-annual basis including a ~~[calibration]~~ functionality chart;
(23) expressing a bias in any manner regarding the truthfulness of the examinee prior to the completion of any testing;
(24) conducting a clinical polygraph examination of a sex

offender without holding a current certification from the American Polygraph Association for post conviction sex offender testing;

(25) not maintaining records of all deception detection examinations for a minimum of three years; and

(26) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established by the American Polygraph Association Code of Ethics, dated January 10, 1999, and Standards of Practice, dated January 20, 2007, which are hereby incorporated by reference.

KEY: licensing, deception detection examiner, deception detection intern

Date of Enactment or Last Substantive Amendment: [~~August 24, 2010~~2014]

Notice of Continuation: January 31, 2012

Authorizing, and Implemented or Interpreted Law: 58-64-101; 58-1-106(1)(a); 58-1-202(1)(a)